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10/506,417

08/31/2004

Emmanouil Domazakis

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/506,417	<b>Applicant(s)</b> DOMAZAKIS, EMMANOUIL	
	<b>Examiner</b> JYOTI CHAWLA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Amendments filed December 1, 2008 have been entered. Claims 6-8 have been amended and claim 11 has been cancelled. Claims 6-10 and 12 remain pending and are examined in the application.

#### ***Specification***

Applicant's amendment to the specification dated 12/1/2008, arranging the previously disclosed subject matter according to 37 CFR 1.77(b) has been received however has not been entered. Applicant has not complied with the following requirements:

#### Abstract of the Disclosure

As discussed in the previous office action, the abstract of the disclosure has to be a single paragraph and applicant's submission of 11/12/08 does not comply with that requirement and therefore **is not entered**. Applicant is referred to 37 CFR 1.77(b) for details.

(k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

#### Specification

The amendment filed 12/1/2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The newly added material which is not supported by the original disclosure has been added to the specification at several places. An example is as follows: Paragraph "there is also some

established technique....at 100 °C two consecutive times” (New spec page 2, second last Para of Background of invention) was not part of the original disclosure.

Similarly, the language of first 4 lines of Summary of invention (New Spec Page 2) is different from the language of page 1 of original specification, from where the subject matter has been addressed.

Similarly language on page 4 of the newly arranged specification has been changed at numerous places without showing deletions (strikethrough in the markup) and additions (underlined text in the markup). For example, language and temperature range of last paragraph on page 4 of new specification has been changed and is not the same as disclosed in the original disclosure (page 4, lines 24-30 of the original specification). There are other several new additions of words and phrases in the specification which add new matter o the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

#### Claims

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d) (1) and MPEP § 608.01(o), as stated in the previous office action under step (j) of the specification. Correction of the following is required: Since claims 6-12 dated 8/31/04 were part of the application as filed, they are part of original disclosure. Applicant is required to include the subject matter recited in the originally filed claims, i.e., claims filed 8/31/04, in the specification if it is not a part of the specification already. Applicant is required to follow 35 U.S.C. 132(a), which states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure of 8/31/04 will not be entered.

#### ***Claim Objections***

Claim 6 is objected to for the recitation of “°” as the unit of relative humidity, it should be “%”.

Claims 8 objected to because of the following informalities: The claims as recited include the term “methods of claim 8”, which should be “method of claim 8”. Appropriate correction is required.

***Claim Rejections - 35 USC § 112(First paragraph)***

Rejection of claims 6-12 35 U.S.C. 112, first paragraph “resulting product temperature not exceeding 4°C” have been withdrawn based on applicant’s amendments cancelling the undisclosed matter.

***Claim Rejections - 35 USC § 112(second paragraph)***

Rejections of claims 6-12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention made in the previous office action have been withdrawn based on applicant’s amendments dated 12/1/08.

Claims 6-7 and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitation of “adding refrigeration in the presence of CO<sub>2</sub>” as recited in step (e) of claim 6, renders the step indefinite. It is not clear what is encompassed by the term “adding refrigeration” and how does it differ from “refrigeration” as was recited in the previously examined claim. The specification also does not disclose “adding refrigeration”. Correction and/or clarification is required.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 6-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Hans Drexel (DE 10065633 A1) German document and machine translation, Handbook of Meat Product Technology by Ranken, hereinafter Ranken and Mally et al (US4716821), hereinafter Mally.

The applied reference Domazakis has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(b).

The references and rejection are incorporated herein and as cited in the office action mailed 5/29/2008.

Domazakis teaches of a method for preparing meat-based products, wherein the incorporation of olive oil (Page 1, line 3), and the addition of milk protein comprising the following steps:

Regarding steps (a-c) of claims 6 and 8, Domazakis teaches mixing meat with water at a temperature of 0 °C to -2 °C and adding salt, plant fibers and breadcrumbs (i.e., vegetable proteins and starch) (Page 3, lines 24-26), followed by the addition of olive oil when the temperature of mixture is 2 °C (Page 3, lines 26-28). However, Domazakis reference also teaches that the addition of olive oil should be "direct in frost embodiment of olive oil" and critical temperatures for production of meat and olive oil based products are "0-4 °C" (Page 2, line 35 to Page 3, line 23). Domazakis reference also teaches that vacuum and temperature control at the time of mixing meat with olive oil is done to create "stable protein complex round the fat-orbs without the application of high temperatures" and insure "a stable behavior of the emulsion meat-paste in the phases of caloric process" (Page 2, line 45- page 3, line 23). Further, the claim as recited does not disclose the temperature of the olive oil, when it is added to water and meat mixture.

Thus, general meat processing conditions as taught by Domazakis for processing of meat, water and olive oil sausage product are combined in a temperature range of -2 °C to 4 °C, which is the same as recited by the applicant. Domazakis teaches of water at -2 °C and meat at 0 °C and oil addition when the mixture is at 2 °C and continuation of mixing and vacuuming till the mixture reaches 4 °C (Domazakis page 3, lines 24-32), wherein the invention as claimed recites of meat at -2 °C, water at 2 °C and olive oil addition when mixture is at 0 °C mixing and vacuuming till the mixture reaches 4 °C (Page 3, lines 29-31) (claims 6 and 8 steps (a-c)). Modifying the temperatures of individual ingredients (water, meat and olive oil) each other while maintaining the processing temperature of meat water and olive oil mixture was within the purview of one of ordinary skill at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis and incorporate individual ingredients (oil, water and meat) at slightly different temperatures during processing of the meat, water and olive oil mixture, while still maintaining the general processing conditions of vacuum and temperature within the processing temperature range of -2 °C to 4 °C, at least based on the equipment and ingredients available.

Regarding steps (d-g) Domazakis teaches addition of milk protein to the meat and olive oil mixture (Page 3, lines 26-36), continuing vacuum mixing until the cheese is totally dispersed throughout the resulting product (Page 3, lines 26-36), as recited in step (e); and conveying the resulting product to a filling machine (forming machine), where it is formed in desired shape and stored, with a simultaneous vacuum application at 1000 mbar. The product as taught by Domazakis is exposed to a heat treatment as it is pasteurized at 71 °C. Domazakis teaches that the processing time varies between 1-3 hours based on the diameter of the product (Page 3, lines 31-36). Domazakis also teaches of moving the resulting product into a freezer unit with temperatures in the range of -2 to 2 °C (Page 3, lines 35-36 and page 2, lines 35-40) which will make the core temperature of the product reach 0 °C, i.e., the core of the product will be frozen, as instantly claimed in step (g).

Regarding step (d) Domazakis teaches of a process of making the meat based product wherein milk protein is incorporated in the meat and olive oil mixture (Page 3, lines 26-36). Process taught by Domazakis produces pork meats with olive oil products with excellent stability (Domazakis, page 3, lines 38-43), i.e., stable incorporation. However, Domazakis is silent as to the addition of feta type cheese and stable incorporation throughout the mixture. However, it was known at the time of the invention that cheeses comprise milk proteins and meat products containing cheese were known at the time of the invention (e.g., Bratwurst Links with cheddar, Sonoma sausage). Further, sausages wherein soft and/ or fresh cheeses are added to the meat in order to make a low fat sausage product were also known at the time of the invention as taught by Hans Drexel, hereinafter, Drexel (Abstract). Thus, sausage type foods comprising cheese were known in the art at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method as taught by Domazakis and add cheese to the meat and olive oil mixture based on the teachings of Drexel. One would have been motivated to add cheese at least to provide an additional protein source in the meat product and make a cheese flavored meat sausage as taught by Drexel.

Regarding feta type cheese as recited in claims, Drexel teaches of addition of fresh and soft cheese to the meat sausage product (Translation pages 1-2). Further, feta was known at the time of the invention as a soft cheese. Therefore, to substitute any soft or fresh cheese for another in the process of making sausage product of Domazakis based on the teachings of Drexel would have been a matter of routine determination to one of ordinary skill in the art at the time of the invention. One of ordinary skill would have been motivated to substitute one art recognized functional equivalent (i.e. soft /fresh cheese) for another (i.e. feta cheese) in the process of making the meat based sausage product as disclosed by Domazakis (modified by Drexel), at least for the reasons of taste preference, availability and affordability of a cheese at the time the invention was made. Further, applicant's attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:



This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Regarding step (e) Domazakis reference does not specifically teach the refrigeration step with CO<sub>2</sub> while mixing, however, Domazakis teaches of mixing the product under vacuum (Page 3, lines 25-35) in the temperature range as recited by the applicant. Domazakis further teaches of the criticality of maintaining suitable temperature in the process of adding olive oil to meat (Page 2, lines 10-40). Domazakis also teaches that the critical temperature for the production of meat and olive oil emulsion for making sausage like products lie in the range of 0-4 °C and freezing temperature (0 °C). Thus, the step of vacuum mixing while maintaining a low temperature is maintained as taught by Domazakis would have required refrigerated conditions in order to maintain the processing conditions of Domazakis. Further, lowering temperature by introducing CO<sub>2</sub> (i.e., dry ice) was well known at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis and use CO<sub>2</sub> to maintain refrigeration temperature in the meat processing area, at least for the purpose of processing meat in microbially safe temperature zone. One would have been further motivated by the inhibitory effect of CO<sub>2</sub> on the growth of aerobic bacteria on meat based products.

Regarding step (f) Domazakis teaches of heating the minced meat product at 71<sup>0</sup>C to pasteurize the product prior to freezing. Domazakis also teaches process time of 1-3

hours. Domazakis teaches that it was known at the time of the invention to heat the minced meat product for a time and a temperature to preserve the product either by cooking, pasteurizing etc. Domazakis teaches substantially the claimed method but does not teach a step of "heat treatment at 96-99 °C and relative humidity of 95-96 % in a linear boiler". Ranken discloses heat treatment and relative humidity as known variables in the cooking of meat products explaining that a higher temperature and humidity (such as, steaming) provides improved cooking (see table 7.2 and pages 110-112). Accordingly, it would have been obvious to one of ordinary skill in art to use the teachings of Ranken in the range as claimed, because it has been held that where the general conditions of the claims are disclosed in the prior art, it is not inventive to discover the optimum or workable range by routine experimentation. See *In re Aller*, 220 F.2d 454, 105 USPQ 233, 235 (CCPA 1955).

Regarding the linear boiler, it is noted that a boiler is an equipment to produce steam and since Ranken teaches the advantages of steaming meats and given that use of a linear boiler to produce steam is well known in the art. Therefore, it would have been obvious for one of ordinary skill in the art to modify Domazakis and use an equipment, such as, a linear boiler to produce steam and heat the meat product. Using a specific water heating means to produce steam and heat the meat product with steam would not impart patentable distinction to the claims, absent any clear and convincing evidence and/ or arguments to the contrary.

Regarding step (g) Domazakis teaches of freezing the product after pasteurization (i.e., heat treatment). Domazakis teaches of freezing in freezing chambers (i.e., tunnel) with temperature of -2 °C to 2 °C, which includes applicant's recited range.

Claims 6 and 7 recite of a heat treatment time and temperature but do not recite a size range of the product. Regarding claim 7, Domazakis teaches that the time of the entire process varies based on the diameter of the product (page 3, lines 30-37), i.e., the heat treatment time as taught by Domazakis is related to the size of the product, as instantly claimed. Further, the applicant is referred to the rejection of step (f) above, where

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Ranken teaches that steaming foods was known for its advantages of providing very good heat transfer (Ranken page 111). Thus, steaming meats was known (Ranken) and also was determination of heating time based on the size of the product (Domazakis). It was also well known at the time of the invention that

- At a given temperature, method and equipment of heating, the time required to raise the temperature of food varies with the size of the food product, e.g., it would require a longer heat treatment time for a 1 inch thick piece of meat or sausage as compared to 0.5 inch thick meat or sausage.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis based on the teachings of Ranken and heat the meat based product till it reaches the desired temperature range. It would have been a matter of routine determination for one of ordinary skill to modify the time of heating based on the size of the food product in order to effectively heat the food product as instantly claimed. Further, changing the time of heat treatment would not lend patentable distinction to the claims as recited, absent any clear and convincing evidence and/or arguments to the contrary.

Claim 8, as recited includes the limitations of claim 6 and is rejected for the same reasons as discussed in the office action above regarding claim 6. Claim 8, differs from claim 6 and the prior art by the recitation of a minced meat product with a feta cheese filling. Domazakis in view of Drexel teaches of minced meat foods with cheese where the cheese is homogenously mixed with the mince. However, minced meat food products with filling were also known in the art at the time of the invention as taught by Mally et al, hereinafter Mally. Mally teaches of minced meat product with cheese as a filling (Abstract, Columns 1 and 5). Thus products where minced meat products have cheese as a filling were known at the time of the invention and to use cheese as a filling material as compared to making a homogenous mixture of mince with cheese would not have involved an inventive step. Therefore one of ordinary skill in the art at the time of the invention would have been motivated to further modify Domazakis in view of Mally

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to make a minced meat product with cheese as a filling in order to obtain a cheese filled minced meat product as claimed instantly. One would have been motivated to do so in order to have a product that comprises two flavor zones and is also visually appealing upon transverse cutting.

Regarding claims 9 and 10, Domazakis in view of combination of Drexel, Ranken and Mally teaches meat -based products characterized by the addition of olive oil and cheese and are prepared by the method as instantly claimed.

Regarding claim 12, see the rejection of claims 6 and 8. Domazakis in view of Drexel Ranken and Mally teaches meat -based products characterized by the addition of olive oil and fresh cheese, such as, feta cheese, either homogenously mixed with minced meat or as a filling in the food product as instantly claimed.

(B) Rejection of Claims 6-10 and 12 under 35 U.S.C. 103(a) as being unpatentable over Stevens et al (GB1108994) (IDS) in view of the combination of Christiansen et al (US 5654028), Sonoma sausage, Farkye et al (US 5766657) and Mally et al (US4716821) have been withdrawn based on applicant's amendments.

### ***Response to Arguments***

Applicant's remarks about specification, abstract and 112 rejections have been considered and responded in the office action above.

Applicant's arguments dated 12/1/2008 with respect to claims 6-10 and 12 over Domazakis in view of combination of references have been considered but have not been found persuasive.

i) Applicant's allegation that "It is very clear from the Domazakis reference that the disclosure does not teach the incorporation of a cured cheese, but to the contrary is

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using milk protein, a constituent of raw milk, together with vegetable protein, polyphosphates, water and salt for the incorporation of olive oil in lean meat" (Remarks, Page 6). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case Domazakis has been relied upon to teach a process of making meat and olive oil based food product as instantly claimed. Process taught by Domazakis also includes incorporation of milk protein. Domazakis does not specify the source of milk protein and is silent about the addition of cheese. However, cheese containing meat products were known and available at the time of the invention as taught by Drexel (abstract and machine translation). Therefore, it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to modify the process of Domazakis to include addition of cheese, to incorporate the organoleptic properties of cheese into the meat and olive oil product of Domazakis while also increasing the protein content. Regarding the specific type of cheese included in the process of making the meat product of modified Domazakis, one of ordinary skill would have been motivated to substitute one art recognized functional equivalent (i.e. soft /fresh cheese) for another (i.e. feta cheese) in the process of making the meat based sausage product as disclosed by Domazakis (modified by Drexel), at least for the reasons of taste preference, availability and affordability of a cheese at the time the invention was made. (Also see rejection of claims above for further details). Therefore, the invention as claimed is obvious over Domazakis, in view of Drexel, absent any clear and convincing arguments or evidence to the contrary.

ii) Applicant's assumption that "The term "milk protein" placed in the Google search engine will make is very clear to the Examiner that milk protein is a basic constituent of raw milk that in no way, shape, or form can be considered to be "cheese"" is unsubstantiated as cheese products also contain milk protein.

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Similarly applicant's assertion that "It is very clear from the Domazakis reference that the disclosure does not teach the incorporation of a cured cheese, but to the contrary is using milk protein, a constituent of raw milk," is not persuasive. It is noted that Domazakis does not disclose a source of "milk protein" in the reference. Thus, applicant's claim that milk protein as disclosed by Domazakis is a constituent of "raw milk" is unsubstantiated.

iii) Applicant's argument that "By direct contrast, the present Application teaches the direct incorporation of feta-type cheese, which it is to be noted is not characterized as being a milk protein, but rather is a cured feta-type cheese. The cited Domazakis reference in no way suggests to or teaches one of ordinary skill in the art how to incorporate a cured feta-type cheese into a meat based product" (Remarks, page 6, last 6 lines).

The applicant also states "Applicant deals with ...greater instability problems due to the coarse comminution adopted in their making" (Remarks, page 6, last paragraph).

Applicant also states that "combined presence of olive oil and feta cheese in a coarsely comminuted non-encased meat mixture" and "stability, detachment of feta particles from the surrounding matrix and exudation" (Remarks, page 7, paragraph 1).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "combined presence of olive oil and feta cheese in a coarsely comminuted non-encased meat mixture" and "stability, detachment of feta particles from the surrounding matrix and exudation" are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Double Patenting***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

I) Applicant's remarks regarding the double patenting rejection have been considered, however the reasons provided in the previous office action still remain and rejection of claims 6-10 and 12 on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over claims 7-12 of copending Application No.10/506,411 is maintained for the reasons of record.

II) Applicant's argument regarding the provisional nonstatutory obviousness-type double patenting rejection of claims 6-10 and 12 over claims 1-2 of U. S. Patent No. 7026007 B2 is that U. S. 7026007 claims "raw milk protein" and the current invention claims "cheese" (remarks, page 8, Para 3) and thus, they are not obvious variants, is not persuasive. First of all, the claim 1 of US 7026007 B2 recites "milk protein" and does not recite the source of milk protein. Further, in response to applicant's assertion that cheese does not contain any milk protein, it is noted that cheese contains protein. Thus, it would have been obvious to one of ordinary skill that a milk protein product may be provided in the form of cheese the meat based composition of Domazakis. Thus, the process of making meat and olive oil and cheese based composition is an obvious variant of the process of making milk, olive oil and milk protein based food product and is still deemed that, if allowed, would improperly extend the "right to exclude" already granted in the patent. Therefore, applicant's arguments regarding the provisional nonstatutory obviousness-type double patenting rejection of claims 6-10 and 12 over claims 1-2 of U. S. Patent No. 7026007 B2 is that U. S. 7026007 have been considered, however, the obviousness-type double patenting rejection made in the previous office action is still deemed proper and maintained for reasons of record.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/  
Examiner  
Art Unit 1794

/JENNIFER MCNEIL/  
Supervisory Patent Examiner, Art Unit 1794